

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5264 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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JAKIRHUSEEIN AHMEDALI VORA

Versus

DIRECTOR GENERAL OF POLICE  
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Appearance:

MR KARTIKEY P RAWAL for Petitioner  
MS DEVANI, AGP for Respondent No. 1  
MS LILU K BHAYA for Respondent No. 2  
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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 01/10/97

ORAL JUDGEMENT

1. Admit. Ms.Devani, AGP appears for respondent No.1 and Ms. Lilu K.Bhaya appears for respondent No.2. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.

2. By this First Appeal which was originally filed

by Jakirhussein Ahmedali Vora now represented by his heirs and legal representatives is directed against the judgment and award in Motor Accident Claim Petition No. 92 of 1992 given by Motor Accident Claims Tribunal, Ahmedabad, wherein he claimed total amount of Rs. 1 lac while the Tribunal awarded Rs.65,900/- by judgment and award dated 24th of April, 1995. The Tribunal has while awarding the amount, deducted the amount of Rs. 12,500/- which was paid to the applicant as interim compensation on the basis of "no fault liability" vide order dated 18th of August, 1994. In fact, the total amount awarded works out to Rs. 65,900/-, out of which, the said amount of Rs. 12,500/- is deducted and that is how the ultimate award which is passed is of Rs. 53,400/-.

3. The claimant is partially aggrieved by the aforesaid award and he has submitted before the court that an additional amount of Rs. 12,500/- ought to have been awarded to him towards pain, shock and suffering and amount of Rs.5,000/- ought to have been awarded to him for treatment, medical bill, etc.

4. Ms. Lilu Bhaya, learned counsel appearing for the second respondent has strongly objected to granting of any increase in the amount already awarded by the Tribunal and having taken the court through the findings recorded by the Tribunal in Para 8 on Issues No. 2 and 3 and in para 9, it is submitted before the court that the Tribunal has awarded the just and proper amount and no increase is called for.

5. On the other hand, Mr. Kartikey P. Raval appearing for the appellant has drawn my attention to the findings recorded on issues No. 2 and 3 by the Tribunal and the discussion on the said issues in para 8. Admittedly, the vehicular accident has taken place wherein the vehicle of the first respondent was involved which was insured with second respondent. Now one turns to the finding of the Tribunal that there was rash and negligent driving of the vehicle of the first respondent which has resulted into injury to the claimant, one ultimately shall have to undertake the exercise of finding out the just, proper and equitable amount, which could be awarded to the injured person. In the present case it is found that the claimant who was injured has given his own evidence and in such evidence he has stated that he was admitted in the Civil Hospital, Ahmedabad after the accident as indoor patient. He has stated that operation was performed on him. He has stated that the plate fixation was done. He was treated as indoor

patient for about two and half months. The period of hospitalization and insertion of iron plate in the leg is always viewed very seriously by this court. Even after discharge from the hospital he had to take treatment as outdoor patient as he was not completely cured. He has deposed that even at the time of his deposition he was required to take treatment. He has also stated that if he does any work involving physical strain, bleeding starts from the old wound and dressing is required to be done. From the medical certificate which is produced and exhibited at Exhibit 24, the Medical Officer of Civil Hospital, Ahmedabad, has admitted that the injured was admitted in the hospital on 23rd January, 1992 at 8.15 a.m. and was discharged from the hospital on 26th March, 1992. The nature of injuries he has received are also stated in the certificate which are to be found on page 8 of the judgment of the Tribunal.

(1) A.C.L.W. of about 7 cms x 5 cms x  
fragments of bone visible at upper 1/4 of  
Rt. upper arm.

(2) Two abrasions of about 2 cms x 2 cms size  
at lower 1/4 of lateral aspect of right  
forearm.

X-ray of right shoulder revealed fracture of right humerus and X-ray of chest revealed fracture of right clavicle on lateral side. It transpires from the discharge card at Exhibit 22 that operation for plate fixation was performed. According to the evidence of Dr. Hiren Maniar who is a well known Orthopaedics Surgeon in the city of Ahmedabad and as per his certificate at Exhibit 60 the disability was caused to the injured and that certificate is also produced at Exhibit 61. The injured person suffered permanent physical impairment of 40.5 per cent for upper limb. In view of the aforesaid findings, the Tribunal awarded the amount of Rs. 12,500/- to the applicant towards pain, shock and suffering, and in my opinion, the Tribunal was absolutely unjust, not alive to the judgments of this court and not alive to its duties by ignoring the fact that the fracture was of right shoulder and right humerus and X-ray of chest also reveals that fracture of right clavicle on lateral side. Hospitalisation of the person for such a long period undergoing the pain of placing of a plate which would also require the removal of the plate at some future date which would also require incurring of expenses towards medicine and the charges of the doctor

and which would also require him to undergo the pain, shock and suffering once again when the plate shall be taken out, are the factors which are totally lost sight of by the Tribunal and the award of amount of Rs. 12,500/- towards pain, shock and suffering by the Tribunal is absolutely unjust, unfair and in total disregard of the law laid down by the Division Bench of this Court. In my opinion, the total amount of Rs. 20,000/- which is claimed under pain, shock and suffering ought to have been awarded and the judgment and award of the Tribunal awarding simply Rs. 12,500/- is required to be quashed and set aside and is hereby quashed and set aside and is substituted by awarding the full amount of Rs. 20,000/- under that Heading. The Tribunal has in para 9 of its award awarded Rs. 2,000/- for medicines and medical treatment, but has not taken into account the fact that the injured shall have to undergo the further future surgery for removal of the plate which would include the charges of the doctor, for treatment and various other expenses which will be required to be incurred by him towards medicines. The additional amount of Rs. 2,500/- (Rupees two thousand and five hundred only) towards treatment under that Heading would, in my opinion, be just and proper and accordingly the additional amount of Rs. 2,500/- is awarded under that Heading. In view of the aforesaid an additional total amount of Rs. 10,000/- (Rupees ten thousand only) is required to be awarded and is awarded and the judgment and award of the Tribunal is modified to the aforesaid extent by increasing the amount awardable to the claimant by increase of Rs. 10,000/- as aforesaid. The appeal partially succeeds with cost to the aforesaid extent only.

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